

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

THOMAS & NICOLE SHELTON, SP 2014-HM-218 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 9.5 ft. and roofed deck to remain 7.9 ft. from a side lot line. Located at 1720 Burning Tree Dr., Vienna, 22182, on approx. 12,616 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 29-3 ((11)) 6. Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 28, 2015; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owners of the land.
2. This is a difficult case in some ways, but it also fits the criteria for this type of applicant.
3. The structure itself is attractive.
4. It would be a considerable hardship to make the applicant demolish it and move it just a couple of feet.
5. The impact of the structure would not be significantly different from where it is now and where it is supposed to be.
6. It is vague as to why it is bigger or why the measurements are off. From the photographs and the surroundings, particularly the large fence to the side of it, there is really not a significant impact in that direction. It might be noticed from the street, but on balance, there would not be a significant negative impact from leaving it there.
7. There would be a significant financial hardship to go through that exercise of slightly moving it.
8. Staff is not making a recommendation; but it does meet the criteria.
9. The Board has determined that the mistake section criteria have been met.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. The error exceeds ten (10) percent of the measurement involved, or
- B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with

another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and

- C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- F. It will not create an unsafe condition with respect to both other property and public streets, and
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
- H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This special permit amendment is approved for the location of the addition and roofed deck as shown on the special permit plat, titled "Special Permit Plat Lot 6 Section 2 Tyson's Green" prepared by Alterra Surveys, Inc., dated September 24, 2014.
- 2. All applicable permits and inspections shall be obtained and approved for the addition and roofed deck within six months of the approval of this application.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless all permits and inspections as noted above have been approved. The Board of Zoning Appeals may grant additional time to obtain the permits and inspections if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested, and an explanation of why additional time is required.

Mr. Byers seconded the motion, which carried by a vote of 4-1. Mr. Beard voted against the motion. Ms. Theodore and Mr. Smith were absent from the meeting.

A Copy Teste:

A handwritten signature in cursive script, reading "Mary D. Padrutt".

Mary D. Padrutt, Deputy Clerk
Board of Zoning Appeals